

# **APPENDIX A-5**

# **ON-SITE WASTEWATER TREATMENT SYSTEM DESIGNER LICENSING PROGRAM**

## **COMPLAINT THRESHOLD GUIDELINES**

### **SECTION A: PURPOSE AND SCOPE**

Local Health Jurisdictions (LHJ) are charged with the responsibility to administer state health regulations regarding on-site wastewater disposal systems. In executing those requirements LHJ staff interact with and review designs prepared by On-Site Designers and Professional Engineers licensed through the Board of Registration for Professional Engineers and Land Surveyors.

On those occasions when a licensed designer or professional engineer submit work for LHJ review that reveals the appearance that the individual does not have the knowledge or is otherwise not complying with state and local regulations governing on-site designs, then corrective action may be justified. As much as possible, local health staff should try to address and resolve the problems with submitted designs before resorting to filing a complaint with the Board. However, if that effort is unsuccessful or the LHJ staff experience repeated problems from the same designer, then the steps on the following pages may be useful.

This guideline is offered in the spirit of collaboration and shared responsibility with the Board, the Department of Health, Local Boards of Health and employees of Local Health Jurisdictions. The information is offered only as suggestions toward helping get better quality designs submitted for review. It is patterned after a program developed by your colleagues in the Thurston County Health District that has proven to produce good results. The ideas and alternatives may be used in any combination or sequence as they would fit within your current program and processes.

The Board and On-site Advisory Committee are interested in any comments you wish to provide to make this starting point even more useful.

### **SECTION B: CATEGORIES OF INFRACTIONS**

#### **Competency Issues:**

- Incorrect soils analysis.
- Incorrect measurement of topography and elevations.
- Incorrect mapping of contours and existing features & structures.
- Incorrect or incomplete mapping of as-built conditions.
- Incorrect mapping of reserve areas.
- Failure to properly research and illustrate restricting conditions such as:
  1. Correct locations and nature of rights-of-way and property lines.
  2. Correct locations and nature of all easements.

3. Wells, surface water, infiltration systems and drainage courses.
4. Illustration of applicable setback restrictions.

**Administrative Issues:**

- Failure to submit complete application and/or provide required supporting information.
- Failure to follow administrative processes established by LHJ.
- Failure to meet required deadlines such as not submitting an as-built on time.
- Failure to follow site-specific design criteria that may be established by LHJ. (commercial / residential)
- Failure to meet specified accuracy standards established by the LHJ.

**Quality Control Issues:**

- Illegible drawing.
- Incorrect or missing scale for drawing.
- Drafting errors.
- Sloppy/confusing illustration that:
  1. Does not show site conditions in correct relationship to each other.
  2. Does not show or incorrectly shows a "north arrow".
  3. Shows details differently than the primary design information.

**Ethical / Professional Conduct Issues:**

- Collecting fees/retainers without providing expected services.
- Willfully providing false or misleading information to client, contractors or LHJ.
- Failing to keep client informed or make reasonable effort to respond to client questions.
- Ignoring specific instructions provided by LHJ staff.
- Participating in conduct that is known to be in direct violation of state and/or local environmental health regulations.

**SECTION C: EVALUATION OF VIOLATIONS**

The following could be considered as grounds upon which the LHJ may initiate discussions with a designer/engineer regarding performance issues:

- Submittal of a design that violates any provisions of WAC 246-272 or County Sanitary Code which pose risks to public or environmental safety.
- Submittal of a design that violates the policy established by the department for the implementation of Article IV, WAC 246-272, or Recommended Standards and Guidance documents.
- Violations of any provision of WAC 196-33, *Rules of Professional Practice For Licensees Designing On-Site Wastewater Treatment Systems*.

- Performing work associated with on-site sewage systems that is, or results in, a violation of Article IV, WAC 246-272, or any policy established by the department.

**How do you rate the severity of the design deficiencies? Ask yourself these questions:**

- What is the severity of the violation in terms of threat to human health and environmental degradation?
- What is the potential magnitude of the violation in terms of type or amount of pollutant or resources affected, and the duration or number of specific violations?
- Determine whether the violation was intentional, the degree of negligence involved in the violation, and precautions taken to prevent the violation.
- What is the record of identical or similar violations or a pattern of violations indicating a general disregard of public health and environmental health rules and laws?
- How has the licensee responded to past efforts to acquaint them with applicable requirements?
- Is there shared fault or responsibilities of two or more violators who may each have some portion of the responsibility for the violation?
- What was the degree of cooperation and response of the violator in working toward compliance?
- What was the timelines and appropriateness of corrective action taken by the violator?
- Did the violator achieve a monetary benefit from the violation?
- Are there any related public health or environmental actions that may be taken by other local or state agencies?

**SECTION D: SUGGESTED REVIEW PROCESS**

When an initial review of a design submitted shows the design is unacceptable and fails to comply with published performance standards and expectations:

- Step 1: Before returning the design to the licensee, have the design reviewed by other qualified staff, if possible, to develop confirming agreement on what problems exist and their severity.
- Step 2: Communicate in writing (\*) to licensee the status of that review, being as detailed as possible on the shortcomings found in the review. It would be wise to emphasize those problems that reflect a design that, if constructed, would likely harm the environment. This communication could be in the form of a letter or face-to-face meeting. The decision on whether or not to schedule a meeting with the

designer/engineer to discuss the issue will be at the discretion of the designer program personnel.

*(\*) It is highly recommended that all communications between the LHJ and the designer be copied to the homeowner.*

Step 3: Corrected submittal is received and reviewed.

Step 4: If corrected submittal fails to meet requirements, licensee is notified in writing of deficiencies and is required to come to the offices of the LHJ for a discussion on the status of the design. Discuss the issues with the designer/engineer to find out their point of view and to clearly state the department's expectations or requirements.

*At this meeting the LHJ staff should determine if this designer is competent to perform designs and can bring the current submittal up to acceptability. A consideration may be to invite the homeowner/applicant to the meeting so they can observe and hear the discussion.*

*Depending upon the level of confidence the LHJ staff has with the licensee to attempt further revisions and the types of infractions, all instructions to the licensee at this point could be copied to the Board. Such copied information is intended to alert the licensee that you feel the situation warrants the attention of the Board. It would not be treated as a formal complaint unless a completed complaint form was submitted to the Board. **However, depending upon the information provided, the Board could choose to initiate an investigation on their own.***

Step 5: The LHJ can always exercise its discretion to continue to work with the licensee to accomplish a satisfactory resolution. It is not a requirement or expectation that all design defects or shortcomings be reported to the Board for formal investigation. The decision of when to exercise that option is the call of the LHJ.

Step 6: When a complaint is filed with the Board and it follows unsuccessful attempts by the LHJ to resolve / correct the problem at the local level, it is very helpful to the Board to have copies of all design submittals, communications, and meeting notes/records the licensee made for a given project. In that way the Board is better able to make a balanced evaluation of the licensee's performance following repeated evaluations by the LHJ.

## **SECTION E: WAYS TO IMPROVE DIALOGUE AND RESULTS**

Here are ideas on how to make dialogue with licensees productive.

- Make a thorough review of how design requirements are published and distributed to applicants, licensees and contractors. Are the forms and instructions you use free of ambiguity? Is there clear reference to published administrative rule in chapter 246-272 WAC? If your jurisdiction has implemented specific performance criteria, are those requirements clearly understood?
- In meetings, maintain an objective atmosphere through peer review of the issue at hand. To help accomplish this, the case handler who identifies the problem should not be involved in the meeting with the designer or engineer.
- Keep consistency in mind. Are the issues you are addressing with a particular designer / engineer being handled in a similar way with all other designers? If not, why not?
- Avoid getting involved into “design by review” practices. In that, with repeated reviews (and deficiency lists from your staff) of a design, you may obtain a useable design but the designer is still unable to perform to your expectations and the next submittal will see little improvement.